

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ROBERT L. MIKLAS,

Petitioner,

v.

**WARDEN, ROSS
CORRECTIONAL INSTITUTION,**

Respondent.

**Case No. 2:14-cv-00281
JUDGE GREGORY L. FROST
Magistrate Judge King**

ORDER

On June 19, 2015, the Magistrate Judge recommended that this habeas corpus action under 28 U.S.C. § 2254 be dismissed as untimely. *Report and Recommendation*, ECF No. 11. Petitioner objects to that recommendation. *Objection*, ECF No. 12.

In his *Objection*, Petitioner contends that the Court is required to consider the merits of his claims, that the statute of limitations should be equitably tolled because his attorney failed to inform him that his direct appeal had been denied, and because he has acted diligently in challenging his conviction for rape of a child under the age of ten.

The record is clear (and, indeed, Petitioner does not appear to argue to the contrary) that this action was not filed within one year after Petitioner's conviction became final. *See* 28 U.S.C. § 2244(d). Nothing in the Rules Governing Section 2254 Cases in the United States District Courts requires this Court to address, under these circumstances, the merits of Petitioner's claims merely because Respondent filed a return of writ. Further, and for the reasons addressed by the Magistrate Judge, Petitioner has failed to establish that equitable tolling of the statute of limitations is appropriate.

Pursuant to 28 U.S.C. § 636(b), this Court has conducted a *de novo* review. *See also* Fed. R. Civ. P. 72(b). Petitioner's *Objection*, ECF No. 12, is **OVERRULED**. The *Report and Recommendation*, ECF No. 11, is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED** as untimely.

The Clerk is **DIRECTED** to enter **FINAL JUDGMENT**.

Moreover, the Court **DECLINES** to issue a certificate of appealability.

/s/ GREGORY L. FROST
GREGORY L. FROST
United States District Judge